

REMARKS

In the Office Action, the Examiner (1) rejected claims 1-3, 30 and 31 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,035,766, issued to Schirmer (hereinafter "*Schirmer*"); (2) rejected claim 5 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,730,045, issued to Delaquis et al. (hereinafter "*Delaquis*"); (3) rejected claim 4 under U.S.C. § 103(a) as being unpatentable over *Schirmer* in view of U.S. Patent No. 5,415,082, issued to Nagao (hereinafter "*Nagao*"); (4) rejected claims 5-13 under U.S.C. § 103(a) as being unpatentable over *Schirmer* in view of U.S. Patent No. 5,219,525, issued to Harrison (hereinafter "*Harrison*"); (5) rejected claim 14 under U.S.C. § 103(a) as being unpatentable over *Schirmer* in view of *Harrison* and further in view of *Nagao*; (6) rejected claims 15-24 under U.S.C. § 103(a) as being unpatentable over *Schirmer* in view of *Harrison* and *Nagao*; (7) rejected claims 25 and 26 under U.S.C. § 103(a) as being unpatentable over *Schirmer* in view of U.S. Patent No. 2,538,567, issued to Jones (hereinafter "*Jones*"); (8) rejected claim 27 under U.S.C. § 103(a) as being unpatentable over *Schirmer* in view of *Jones* and further in view of U.S. Patent No. 5,816,139, issued to Scorta Paci (hereinafter "*Scorta Paci*"); and (9) rejected claims 28 and 29 under U.S.C. § 103(a) as being unpatentable over *Schirmer* in view of *Jones* and further in view of *Nagao*.

I. Status of the Claims

Claims 1-31 are pending and in original form.

II. Claims Rejected as Anticipated

The Examiner rejected claims 1-3, 30 and 31 as being anticipated by *Schirmer* and claim 5 as being anticipated *Delaquis*. Claims 1, 5 and 30 are independent claims. Claims 2-3 depend from claim 1, while claim 31 depends from claim 30.

Claim 1

The cooking apparatus of claim 1 includes an insert rim to be "configured to rotationally engage said vessel rim such that when insert is engaged with said vessel, said insert remains engaged with said vessel as said insert is rotated relative to said vessel *in an arc not less than 45 degrees*" (emphasis added). Referring to Figure 1 of *Schirmer*, tangs 53 of strainer unit 14 do not remain engaged with catch elements 24 of receptacle unit 11 when strainer unit 14 is rotated 45 degrees or more relative to receptacle unit 11. Furthermore, Figure 1 clearly shows that rotating strainer unit 14 relative to receptacle unit 11 significantly less than 45 degrees causes tangs 53 to disengage catch

elements 24, and the supporting description does not teach otherwise. Thus, *Schirmer* discloses a very limited rotational engagement that is unsecure and unsafe, unlike the claimed continuously rotatable engagement that provides additional securement as explained throughout the present specification. For at least these reasons, *Schirmer* does not disclose all of the limitations of claim 1. Therefore, *Schirmer* does not anticipate claim 1.

Claims 2 and 3 are allowable as depending upon allowable claim 1.

Claim 5

The cooking apparatus of claim 5 includes "a latching member attached to and extending from a first of said rims and capturing the other of said rims." Referring to Figure 1 of *Delaquis*, protrusion elements 46 of strainer lid 12 do not capture upper rim 18 of pot 10. Rather, protrusion elements 46 are received by notches 20 in upper rim 18, allowing strain lid 12 to be supported by pot 10. At most, notches 20 capture protrusion elements 46 which is not the claimed arrangement.

For at least these reasons, *Delaquis* does not disclose all of the limitations of claim 5. Therefore, *Delaquis* does not anticipate claim 5.

Claim 30

The method of claim 30 includes "providing a pot having a rim with a plurality of cutouts." *Schirmer* does not disclose a cutout along the rim of sidewall 22 of receptacle unit 11. Instead, *Schirmer* discloses a plurality of catch elements 24 spaced circumferentially along the rim of sidewall 22.

Claim 30 also includes "providing a strainer insert having a rim with a plurality of hooks." *Schirmer* discloses tangs 53 along the edge of strainer unit 14. However, tangs 53 are not hooks. Tangs 53 are not shaped like hooks, nor do they capture catch elements 24 or any part of the rim of receptacle unit 11 as is the function of a hook.

Lastly, claim 30 also requires "rotating the strainer unit such that the hooks do not align with the cutouts so as to lock the strainer insert onto the pot." Not only does *Schirmer* fail to disclose this limitation, *Schirmer* in fact teaches the opposite – that rotating strainer unit 14 relative to receptacle unit 11 such that tangs 53 do not align with catch elements 24 *disengages* strainer unit 14 from receptacle unit 11, *not locks* strainer unit 14 to receptacle unit 11.

For at least these reasons, *Schirmer* does not disclose all of the limitations of claim 30. Therefore, *Schirmer* does not anticipate claim 30. Claim 31 is allowable as depending upon allowable claim 30. Further with respect to claim 31, strainer unit 14 of *Schirmer* may not be removed from

receptacle unit 11 when tangs 53 are aligned with catch elements 24. It is only when tangs 53 are misaligned with catch elements 24 that strainer unit 14 may be removed from receptacle unit 11. For at least this additional reason, *Schirmer* does not anticipate claim 31.

In view of the foregoing, Applicants respectfully request that the Examiner withdraw the § 102 rejections of claims 1-3, 5 and 30-31.

III. Claims Rejected As Obvious

Claim 4

The Examiner rejected claim 4 as unpatentable over *Schirmer* in view of *Nagao*. Claim 4 depends from claim 1. The Examiner relies on *Nagao* to teach an insert comprising a large aperture and a region of straining apertures, while he relies on *Schirmer* to teach all of the other limitations of claim 4, meaning those incorporated from claim 1.

To establish a *prima facie* case of obviousness, three basic criteria must be met: 1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings; 2) there must be a reasonable expectation of success; and 3) the prior art reference(s) must teach or suggest all of the claim limitations. M.P.E.P. § 2143 (2000) (citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991)). If one of these elements is not satisfied, a *prima facie* case of obviousness is not established.

Applicants respectfully submit that a *prima facie* case of obviousness has not been established in regards to claim 4. As discussed above in section II, *Schirmer* does not teach or suggest all of the limitations of claim 1. In particular, *Schirmer* does not teach or suggest "said insert remains engaged with said vessel as said insert is rotated relative to said vessel in an arc not less than 45 degrees." Thus, the combination of *Schirmer* and *Nagao* as proposed by the Examiner does not teach or suggest all of the limitations of claim 4.

Claims 5-13

The Examiner rejected claims 5-13 as unpatentable over *Schirmer* in view of *Harrison*. Claims 6-13 depend from claim 5. Applicants respectfully submit that a *prima facie* case of obviousness has not been established in regards to claims 5-13.

Claim 5 requires "a vessel" and "a strainer insert supported in *rotational engagement* with said

vessel". A person having ordinary skill in the art would not be motivated to combine *Harrison* with *Schirmer* because they disclose fundamentally different devices. *Schirmer* discloses a device having a rotational locking mechanism, i.e., tangs 53 of strainer unit 14 are rotationally aligned within catch elements 24 of receptacle unit 11 to engage strainer unit 14 and receptacle unit 11. In contrast, *Harrison* does not teach or suggest a device having a rotational locking mechanism, but rather a projection and slot locking mechanism that does not permit rotational engagement or disengagement. Specifically, *Harrison* teaches funnel 12 engages funnel holder 20 when funnel slots 28 on funnel 12 are aligned with projections 26 on funnel holder 20 and funnel 12 is translated vertically into funnel holder 20. To disengage funnel 12 from funnel holder 20, projections 26 are aligned with funnel slots 28 and funnel 12 translates vertically relative to funnel holder 20 until projections 26 no longer engage funnel slots 28. Thus, there is no rotational engagement of funnel 12 to funnel holder 20, and in fact, engagement of projections 26 within funnel slots 28 prevent rotational movement of funnel 12 relative to funnel holder 20. Therefore, the two references cannot be combined for their intended purpose.

Claims 5 also requires a latch member attached to and extending from a rim and a cutout in another rim, such that the strainer insert is detachable from the vessel when the latch member is aligned with the cutout. As discussed above, *Schirmer* discloses that strainer unit 14 is detachable from receptacle unit 11 when tangs 53 are misaligned from catch elements 24. Moreover, *Schirmer* does not teach or suggest a cutout in either strainer unit 14 or receptacle unit 11. Therefore, *Schirmer* does not teach or suggest all of the limitations of claim 5.

Claims 6-13 depend from an allowable claim 5. Further in regards to claim 9, *Schirmer* does not teach or suggest a hook that is C-shaped in cross-section. Further in regards to claim 10, *Schirmer* does not teach or suggest that strainer unit 14 remains engaged with receptacle unit 11 when strainer unit 14 is rotated relative to receptacle unit 11 45 degrees or more. Further in regards to claim 11, *Schirmer* does not teach or suggest two cutouts approximately 180 degrees apart in either strainer unit 14 or receptacle unit 11. Further in regards to claim 14, *Schirmer* does not teach or suggest either strainer unit 14 or receptacle unit 11 having more cutouts than latch members. For at least these additional reasons, claims 9-11 and 14 are allowable over *Schirmer*.

Claim 14

The Examiner rejected claim 14 as unpatentable over *Schirmer* in view of *Harrison*, and further in view of *Nagao*. Claim 14 depends from claim 5. The Examiner again relies on *Nagao* to teach an insert comprising a large aperture and a region of straining apertures, while he relies on the

combination of *Schirmer* and *Harrison* to teach all of the other limitations of claim 14, meaning those incorporated from claim 5. As discussed above, a person having ordinary skill in the art would not look to a combination of *Schirmer* and *Harrison* because they disclose devices having fundamentally different locking mechanisms that defeat the purpose of the combination in the first place. Also, as discussed above, *Schirmer* does not teach or suggest all of the limitations of claim 5. In particular, *Schirmer* does not teach or suggest aligning tangs 53 with catch elements 24 to *disengage* strainer unit 14 from receptacle unit 11 or a cutout in either strainer unit 14 or receptacle unit 11. Thus, the combination of *Schirmer* and *Nagao* does not teach or suggest all of the limitations of claim 14.

Claims 15-24

The Examiner rejected claims 15-24 as unpatentable over *Schirmer* in view of *Nagao* and *Harrison*. Claim 15 is an independent claim, while claims 16-24 depend from claim 15. The Examiner relies on *Nagao* to teach an insert access opening, *Harrison* to teach a rim cutout, and *Schirmer* to teach or suggest all of the other limitations of these claims. As previously discussed, a person having ordinary skill in the art would not look to a combination of *Schirmer* and *Harrison* because they disclose devices having fundamentally different locking mechanisms that, when combined, defeat the purpose of a rotationally engaged insert on the vessel rim. Furthermore, in order for the combination of *Schirmer* and *Nagao* to render claims 15-24 unpatentable, *Schirmer* must teach or suggest all of the limitations of these claims except an insert access opening, which is taught by *Nagao*. *Schirmer* does not teach or suggest a rim cutout. Moreover, *Schirmer* does not teach or suggest locking strainer unit 14 within receptacle unit 11 when tangs 53 "are not aligned" with catch elements 24. Thus, the combination of *Schirmer* and *Nagao* does not teach or suggest all of the limitations of claim 15.

Claims 16-24 depend from an allowable claim 15. Further in regards to claim 20, *Schirmer* does not teach or suggest a lid rotatable relative to the insert. Referring to that reference, recesses 27 are dimensioned to receive the outer ends of the divider wall members 30, 31. Thus, when lid member 25 is placed over receptacle unit 11, whether or not strainer unit 14 is inserted into receptacle unit 11, recesses 27 engage divider wall members 30, 31, thereby preventing rotation of lid member 25 relative to receptacle unit 11. For at least this additional reason, the combination of *Schirmer* and *Nagao* does not render claim 20 unpatentable.

Claims 25 and 26

The Examiner rejected claims 25 and 26 as being unpatentable over *Schirmer* in view of *Jones*. Claim 25 is an independent claim, while claim 26 depends from claim 25. The Examiner relies on *Jones* to disclose a locking arrangement including a vessel rim with a cutout and a vessel lid with a C-shaped latch, while he relies on *Schirmer* to disclose all of the other limitations of claim 25.

Claim 25 requires "hook members having C-shaped cross sections disposed on said insert rim." Neither *Schirmer* nor *Jones* discloses an insert rim having a C-shaped cross section. *Jones* does not teach or suggest an insert that comprises any components, C-shaped or otherwise, of the locking mechanism of the disclosed cooking vessel. *Schirmer*, as previously discussed, includes catch elements 24, which may be considered C-shaped. However, catch elements 24 are positioned along the rim of receptacle unit 11, not strainer unit 14. Therefore, the combination of *Schirmer* and *Jones* does not teach or suggest all of the limitations of claim 25.

Claim 26 depends from an allowable claim 25.

Claim 27

The Examiner rejected claim 27 as being unpatentable over *Schirmer* in view of *Jones* and further in view of *Scorta Paci*. Claim 27 depends from claim 25. The Examiner relies on *Scorta Paci* to teach the "lid is see-through," while he relies on the combination of *Schirmer* and *Jones*, as presented above, to disclose all of the other limitations of claim 27, meaning those incorporated from claim 25. For reasons discussed above, the combination of *Schirmer* and *Jones* does not teach or suggest all of the limitations of claim 25, and therefore claim 27 is allowable.

Claims 28 and 29

Lastly, the Examiner rejected claims 28 and 29 as being unpatentable over *Schirmer* in view of *Jones* and further in view of *Nagao*. Claims 28 and 29 depend from claim 25. The Examiner relies on *Nagao* to teach the use of a straining insert having a central access opening and surrounding peripheral straining apertures, while he again relies on the combination of *Schirmer* and *Jones* to disclose all of the other limitations of claims 28 and 29, meaning those incorporated from claim 25. For reasons discussed above, the combination of *Schirmer* and *Jones* does not teach or suggest all of the limitations of claim 25, and therefore claims 28 and 29 are allowable.

In view of the foregoing, Applicants respectfully request that the Examiner withdraw the § 103

rejections of claims 4-29.

CONCLUSIONS

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. No new matter is introduced by way of amendment. It is believed that each ground of objection and rejection raised in the *Office Action* dated July 9, 2007 has been fully addressed. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Conley Rose, P.C.'s Deposit Account Number 03-2769 (1022-02901).

Respectfully submitted,



Matthew R. Mescicki
Reg. No. 57,524
CONLEY ROSE, P.C.
P. O. Box 3267
Houston, Texas 77253-3267
(713) 238-8000
ATTORNEY FOR APPLICANTS